



Billing Code: 3510-DP-P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 160523449-6449-01]

RIN 0605-AA44

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the Department of Commerce (Commerce Department). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology effective for 2016 which provides for initial catch up adjustments for inflation in 2016, and under a revised methodology for each year thereafter. The revised methodologies provide for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. The initial catch up adjustment for inflation of a CMP in 2016 shall not exceed 150 percent of the amount of the CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (November 2, 2015). The initial catch up adjustments for inflation to CMPs are required to be published through an interim final rule not later than July 1, 2016, and the adjustments for inflation shall take effect not later than August 1, 2016. For each year thereafter, the adjustments for inflation to CMPs shall take effect not later than

January 15. These adjustments for inflation apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These adjustments for inflation apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new CMP level.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]; comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION].

ADDRESSES: You may submit comments, identified by the regulations.gov docket number DOC-2016-0004, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=DOC-2016-0004 click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- Mail: Acting Deputy Chief Financial Officer, Office of Financial Management, Department of Commerce, 1401 Constitution Ave NW, Room D200, Washington, DC 20230.

Instructions: You must submit comments by one of the above methods to ensure that Commerce Department receives the comments and considers them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

Commerce Department will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Ayers, Acting Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482-1207, Department of Commerce, 1401 Constitution Avenue NW, Room D200, Washington, DC 20230. The Commerce Department Civil Monetary Penalties; Adjustment for Inflation are available for downloading from Commerce Department, Office of Financial Management's web site at the following address: http://www.osec.doc.gov/ofm/OFM_Publications.html.

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104-134), provided for adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected. On October 24, 1996, November 1, 2000, December 14, 2004, December 11, 2008, and December 7, 2012, Commerce Department published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
2. Is assessed or enforced by an agency pursuant to Federal law; and,
3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Public Law 114-74) further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment requires agencies to: (1) adjust the CMP levels in effect as of November 2, 2015,

with initial catch up adjustments for inflation through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation to CMPs.

Agencies are required to publish interim final rules with initial catch up adjustments for inflation by July 1, 2016, and the adjustments for inflation shall take effect no later than August 1, 2016. For each year thereafter, the adjustments for inflation to CMPs shall take effect not later than January 15.

The maximum amount for an initial catch up adjustment for inflation shall not exceed 150 percent of the amount of that CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (November 2, 2015).

These adjustments for inflation apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These adjustments for inflation apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new CMP level.

For an initial catch up adjustment for inflation to a CMP, agencies may adjust for inflation the amount of a CMP by less than the otherwise required amount if after publishing a notice of proposed rulemaking and providing an opportunity for comment, the agency determines in a final rule that increasing that CMP by the otherwise required amount will have a negative economic impact; or the social costs of increasing that CMP by the otherwise required amount outweigh the benefits. The concurrence of the Director of the Office of Management and Budget will be required if the adjustment for inflation is less than the otherwise required amount.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of Commerce Department. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. The

Penalty Policy is maintained and made available to the public on the NOAA Office of the General Counsel, Enforcement Section, website at: <http://www.gc.noaa.gov/enforce-office3.html>.

The initial catch up adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the revised methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term “cost -of-living adjustment” is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the initial catch up adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for the month of October 2015 exceeds the Consumer Price Index of October of the calendar year during which the amount of such CMP was established or adjusted under a provision of law other than the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For subsequent adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for the month of October preceding the date of the adjustment exceeds the Consumer Price Index for the previous month of October.

Classification

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)(1)) requires initial catch up adjustments for inflation to CMPs and to provide the new CMP levels through an interim final rulemaking, to be published by July 1, 2016. This law also requires agencies to make subsequent annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodologies used for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. Commerce Department is charged only with performing ministerial computations

to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and comment are not required for this rule.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as the term is defined in Executive Order 12866.

Regulatory Flexibility Act

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 15 CFR Part 6

Law enforcement, Civil monetary penalties.

Dated: May 31, 2016.

Jennifer Ayers,

Acting Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce.

Authority and Issuance

For the reasons stated in the preamble, Commerce Department revises 15 CFR part 6 to read as follows:

PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

Sec.

§6.1 Definitions.

§6.2 Purpose and scope.

§6.3 Limitation on initial catch up adjustments for inflation.

§6.4 Adjustments for inflation.

§6.5 Effective date of adjustments for inflation.

§6.6 Subsequent adjustments for inflation.

Authority: Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104-134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114-74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

§6.1 Definitions.

- (a) *Commerce Department* means the United States Department of Commerce.
- (b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

- (1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and
- (2) Is assessed or enforced by an agency pursuant to Federal law; and
- (3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

§6.2 Purpose and scope.

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104-134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Public Law 114-74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Commerce Department).

§6.3 Limitation on initial catch up adjustments for inflation.

The initial catch up adjustment for inflation to a civil monetary penalty shall not exceed 150 percent of the amount of that civil monetary penalty that was in effect as of November 2, 2015.

§6.4 Adjustments for inflation.

The civil monetary penalties provided by law within the jurisdiction of Commerce Department, as set forth in paragraphs (a) through (f) of this section, are hereby adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, from the amount of such civil monetary penalties that was in effect as of November 2, 2015, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$5,500 to \$10,781.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986; newly reported penalty), violation, maximum \$10,781.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from \$5,500 to \$10,781; maximum from \$11,000 to \$21,563.

(b) *Bureau of Industry and Security.* (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from \$32,500 to \$44,539.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$25,000 to \$36,256.

(3) 22 U.S.C. 6761(a)(1)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$5,000 to \$7,251.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum \$284,582.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from \$27,500 to \$29,464.

(c) *Census Bureau.* (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum violation, from \$1,000 to \$1,312; maximum per violation, from \$10,000 to \$13,118.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from \$10,000 to \$13,118.

(d) *Economics and Statistics Administration.* (1) 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from \$2,500 to \$4,454; maximum from \$32,500 to \$44,539.

(e) *International Trade Administration.* (1) 19 U.S.C. 81s, Foreign Trade Zone (1934), violation, maximum from \$1,100 to \$2,750.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada FTA Protective Order (1988), violation, maximum from \$130,000 to \$197,869.

(f) *National Oceanic and Atmospheric Administration*. (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from \$10,000 to \$10,874.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from \$10,000 to \$10,874.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from \$200,000 to \$227,666.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from \$650 to \$1,625.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from \$32,500 to \$81,250.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from \$70,000 to \$175,000.

(iii) Violation of 16 U.S.C. 957(b), maximum from \$1,100 to \$2,750.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from \$6,500 to \$16,250.

(v) Violation of 16 U.S.C. 957(c), maximum from \$140,000 to \$350,000.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950¹ (new penalty), violation, maximum \$178,156.

(7) 16 U.S.C. 959, Tuna Conventions Act of 1950² (new penalty), violation, maximum \$178,156.

(8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975³, violation, maximum from \$140,000 to \$178,156.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from \$350,000 to \$494,672.

(10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from \$11,000 to \$23,548.

(11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from \$11,000 to \$27,500.

(12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act⁴, violation, maximum from \$130,000 to \$178,156.

(13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from \$140,000 to \$167,728.

(14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

(i) Violation as specified (1988), maximum from \$32,500 to \$49,467.

(ii) Violation as specified (1988), maximum from \$13,200 to \$23,744.

(iii) Otherwise violation (1978), maximum from \$650 to \$1,625.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from \$140,000 to \$178,156.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984⁵, violation, maximum from \$6,500 to \$178,156.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990⁶, violation, maximum from \$6,500 to \$178,156.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from \$11,000 to \$25,464.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from \$275 to \$637.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982⁷, violation, maximum from \$140,000 to \$178,156.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985⁸, violation, maximum from \$140,000 to \$178,156.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from \$500 to \$1,078; maximum from \$6,500 to \$10,781.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992⁹, violation, maximum from \$130,000 to \$178,156.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act¹⁰, violation, maximum from \$140,000 to \$178,156.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act¹¹, violation, maximum from \$140,000 to \$178,156.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from \$130,000 to \$154,742.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995¹², violation, maximum from \$140,000 to \$178,156.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act¹³, violation, maximum from \$140,000 to \$178,156.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006¹⁴, violation, maximum from \$140,000 to \$178,156.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from \$11,000 to \$27,500.

(ii) Subsequent violation, maximum from \$32,500 to \$81,250.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from \$32,500 to \$70,117.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from \$32,500 to \$70,117.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012¹⁵ (new penalty), violation, maximum \$178,156.

(33) 16 U.S.C. 7407(b)(1), Port State Measures Agreement Act of 2015¹⁶ (new penalty), violation, maximum \$178,156.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act¹⁷ (new penalty), violation, maximum \$178,156.

¹ This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil monetary penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

² See footnote 1.

³ See footnote 1.

⁴ This National Oceanic and Atmospheric Administration maximum civil monetary penalty was revised by law in 2015 to be the maximum civil monetary penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

⁵ See footnote 4.

⁶ See footnote 4.

⁷ See footnote 1.

⁸ See footnote 1.

⁹ See footnote 4.

¹⁰ See footnote 1.

¹¹ See footnote 1.

¹² See footnote 1.

¹³ See footnote 1.

¹⁴ See footnote 1.

¹⁵ See footnote 1.

¹⁶ See footnote 1.

¹⁷ See footnote 1.

§ 6.5 Effective date of adjustments for inflation.

The adjustments for inflation made by § 6.4, of the civil monetary penalties there specified, are effective on [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION], and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.4, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION] as provided in § 6.6.

§6.6 Subsequent adjustments for inflation.

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to Commerce Department's civil monetary penalties annually, which shall take effect not later than January 15, 2017, and for each year thereafter, notwithstanding section 553 of title 5, United States Code.

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